

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF OKLAHOMA

KARL FONTENOT,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-16-69-JHP-KEW
)	
JOE ALLBAUGH, Director,)	
)	
Respondent.)	

MOTION FOR EXTENSION OF TIME TO FILE
RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND
MOTION FOR EVIDENTIARY HEARING

Comes now the Respondent, through Counsel, and respectfully asks for an extension of time to file a Response to Petitioner's *Amended Petition for Writ of Habeas Corpus and Motion for Evidentiary Hearing*. Respondent requests an additional thirty (30) days, or until November 30, 2017, in which to file the Response. In support of this Motion, Respondent shows the Court the following:

1. Pursuant to this Court's scheduling order, Responses to Petitioner's *Amended Petition for Writ of Habeas Corpus and Motion for Evidentiary Hearing* are due to be filed on October 30, 2017 (Doc. 87-88).
2. No previous extensions have been requested of this Court by Respondent to file a response to Petitioner's *Amended Petition for Writ of Habeas Corpus and Motion for Evidentiary Hearing*.
3. Counsel for Respondent spoke to Counsel for Petitioner on October 26, 2017, concerning the instant Motion. Counsel for Petitioner has no objection to this Court granting Respondent a

thirty-day extension of time (or until November 29, 2017) to respond to the *Amended Petition for Writ of Habeas Corpus* and *Motion for Evidentiary Hearing*.

4. At the time Petitioner filed his *Amended Petition for Writ of Habeas Corpus* and *Motion for Evidentiary Hearing* in this Court on August 18, 2017 (Doc. 77, 86), Counsel had just undergone a second cranial surgery on August 16, 2017, (the first being June 5, 2017) to address complications from brain surgery in December 2016, and was still recovering. Based in part on counsel's health issues, Counsel Peeper also entered an appearance on August 30, 2017 (Doc. 89).

5. During the first week of September, 2017, the neurological condition for which counsel had brain surgery returned. This has, and continues, to require counsel to be out of the office periodically.

6. In addition to medical issues, which caused delays in all cases, Counsel for Respondent has been working a very heavy case load. After returning to the office part-time on August 23, 2017, following surgery, the Oklahoma Court of Criminal Appeals (OCCA) directed counsel to respond to a motion in *Holtzclaw v. State*, F-2016-62, a state direct appeal that has involved complicated litigation over the past several months. Until September 19, 2017, counsel was primarily engaged in preparing that response, which was filed on September 15, and required a substantial amount of time, as well as filing responses on behalf of the State to a petition for writ of federal habeas corpus (*Jackson v. Bryant*, CIV-16-974-R – September 1, 2017) and another direct appeal response brief (*Thompson v. State*, F-2016-982 – September 19, 2017). In late August and early September, counsel also set aside time to view material at the OCCA that could only be reviewed at that location on another matter related to *Holtzclaw*. Although counsel was able to meet most of the above deadlines, these circumstances required the seeking of an extraordinary third extension of time in

Shea v. State, F-2016-1160 (which at that time was due on September 5, 2017). The OCCA granted that extraordinary third extension to file *Shea* by October 13, 2017, and the brief was filed on that date. By late September, however, counsel still had three final due date responses to state direct appeals by October 18, 2017: *Jackson-Hubbs v. State*, F-2016-902 (October 9, 2017), *Shea* (due October 13, 2017, and with no possibility of further extension heard by the OCCA), and *Bailey v. State*, M-2017-78 (October 18, 2017). Counsel has recently been working to meet filing deadlines for two other direct appeal response in *Maldonado v. State*, F-2017-78, due on a final deadline of October 31, and *Payton v. State*, F-2016-194, due November 15, 2017. Counsel also supervises the work of a law student intern as part of his regular job duties. Among other work, co-counsel was also working diligently to complete the brief on behalf of the Respondent in the Court of Appeals in *Smith v. Aldridge*, Case No. 17-6149, which was filed on October 18, 2017; this brief required a substantial amount of time and effort.

7. Petitioner's filings are large and fact-intensive. Due to the above factors, undersigned counsel has not had an adequate opportunity to prepare responses to Petitioner's *Amended Petition for Writ of Habeas Corpus* and *Motion for Evidentiary Hearing*, and also allow for the two-stage mandatory internal review process to take place prior to filing any response in this Court.

8. This request is made in good faith and not for the purpose of delay.

Wherefore, Respondent respectfully requests thirty (30) days from and after October 30, 2017, to file a Response as ordered by this Court.

Respectfully submitted,

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

s/ MATTHEW D. HAIRE
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Tiffany R. Murphy
Robert Ridenour,

s/ MATTHEW D. HAIRE